Merchant gets warning from DBIA lawyer

By Mike Kowalski

A local merchant has been warned of possible legal action for questioning the eligibility of two directors of Whitby's downtown business association.

Dundas Street East hobby shop owner Paul Savage received the warning after making inquiries about two members of the management board of the Downtown Business Improvement Area (DBIA).

The warning from DBIA solicitor Alan McMackin was issued in response to letters Savage wrote in connection with board chair Sean Hogue and director David Johann.

Although circumstances were different in the two cases, McMackin said Savage's only motive was to remove Hogue and Johann from the board.

But Savage, a frequent critic of the DBIA, denies this was his intention and that he had only been seeking information that he, as a DBIA member, is entitled to know.

Savage, in fact, says he will apologize if he "defamed" either man as McMackin's letter insinuates.

In letters to Liberty Mutual (Hogue's employer) and Mayor Tom Edwards (concerning Johann), Savage said both men may have been ineligible to sit on the DBIA board, based on his knowledge of the rules used to choose board members.

Until he received an explanation from Liberty Mutual and the Town, Savage challenged Hogue's and Johann's right to be on the board.

While content to wait for Liberty Mutual to confirm that Hogue's actions as board chair are done with the insurance company's blessings, Savage was not prepared to wait in Johann's case.

In his letter to Edwards, Savage said Johann's financial problems earlier this year may have precluded him from serving.

Johann's audio equipment store went into receivership in February and reopened at another location in March.

Savage felt Johann should step down until Town officials determined his eligibility according to provincial rules governing bankruptcy.

Savage was subsequently informed that Johann is qualified to be a board member.

But as McMackin states in his letter to Savage, the latter only had one purpose in mind.

"It is clear from the contents of your letters, your objective is to force Mr. Hogue and Mr. Johann from sitting on the Board of Directors," states McMackin.

"I have advised Mr. Hogue and Mr. Johann that they have a cause of action against you for interference with economic interests and defamation respectively," he states.

McMackin goes on to inform Savage that any future correspondence concerning the DBIA must be directed to him.

"Assuming it represents positive and constructive input to the operation and objectives of the association, it will receive the appropriate action," states McMackin.

"Please govern yourself accordingly," he adds.

McMackin, whose costs will be paid by the Town, declined to comment on the letter.

"It's accurate, (but) I'm not prepared to discuss my client's affairs," he said.

Edwards also did not want to elaborate on the matter.

"All I know is that Mr. Savage sent me a letter," said Edwards, adding that he did not recall reading it.

"I'm now satisfied that Mr. Johann has every right to be a member of the DBIA board," he said.

Stressing that it was only "my opinion,", Edwards said Savage owes Johann a "public apology."

"I think he would do himself a lot of good if he apologized," said Edwards.

In asking for Johann's resignation, Savage cited Section 38 of the Ontario Municipal Act which refers to the elibility of persons to hold municipal office.

According to the Act, a person is deemed ineligible if he/she "is an undischarged bankrupt or insolvent within the meaning of any bankruptcy or insolvency Act in force in Ontario."

Town clerk Don McKay told The Free Press that based on legal advice, the municipality is satisfied that Johann meets "all the qualifications."

Johann is not considered an "undischarged bankrupt" in the Town's view, McKay said.

Although he preferred to "put it in the past," Hogue said Liberty Mutual had no choice but to seek legal advice after receiving Savage's letters.

"He wrote to my contract carrier and asked them to look into matters that could be legal," said Hogue.

"If you were concerned that you might be liable, you must have a legal opinion," he said.

Among his requests of Liberty Mutual, Savage was seeking acknowledgment from the company that Hogue had permission to represent it on DBIA matters.

If so, then the company was liable for Hogue's actions with respect to any situation that Savage judged to "interfere" with his business.

Referring to a DBIA Easter promotion that he was forced to honour despite his objections, Savage demanded an "immediate retraction and apology from Liberty Mutual" for Hogue's endorsement of the promotion.

(A spokesperson in Liberty Mutual's Unionville office said that while Hogue is their employee, his involvment with the DBIA is strictly of his own choosing.

(Savage's letters were referred to the company's lawyers, the official said.)

Told that Savage feels he did nothing wrong, Hogue advised him to "re-assess what he has written."

Hogue was also emphatic that McMackin's letter is not simply a means of muzzling a DBIA critic.

"Absolutely not," he said.

"As long as he comes up with positive criticism we're prepared to listen.

"But he should address the board. Why drag some third party into it?"

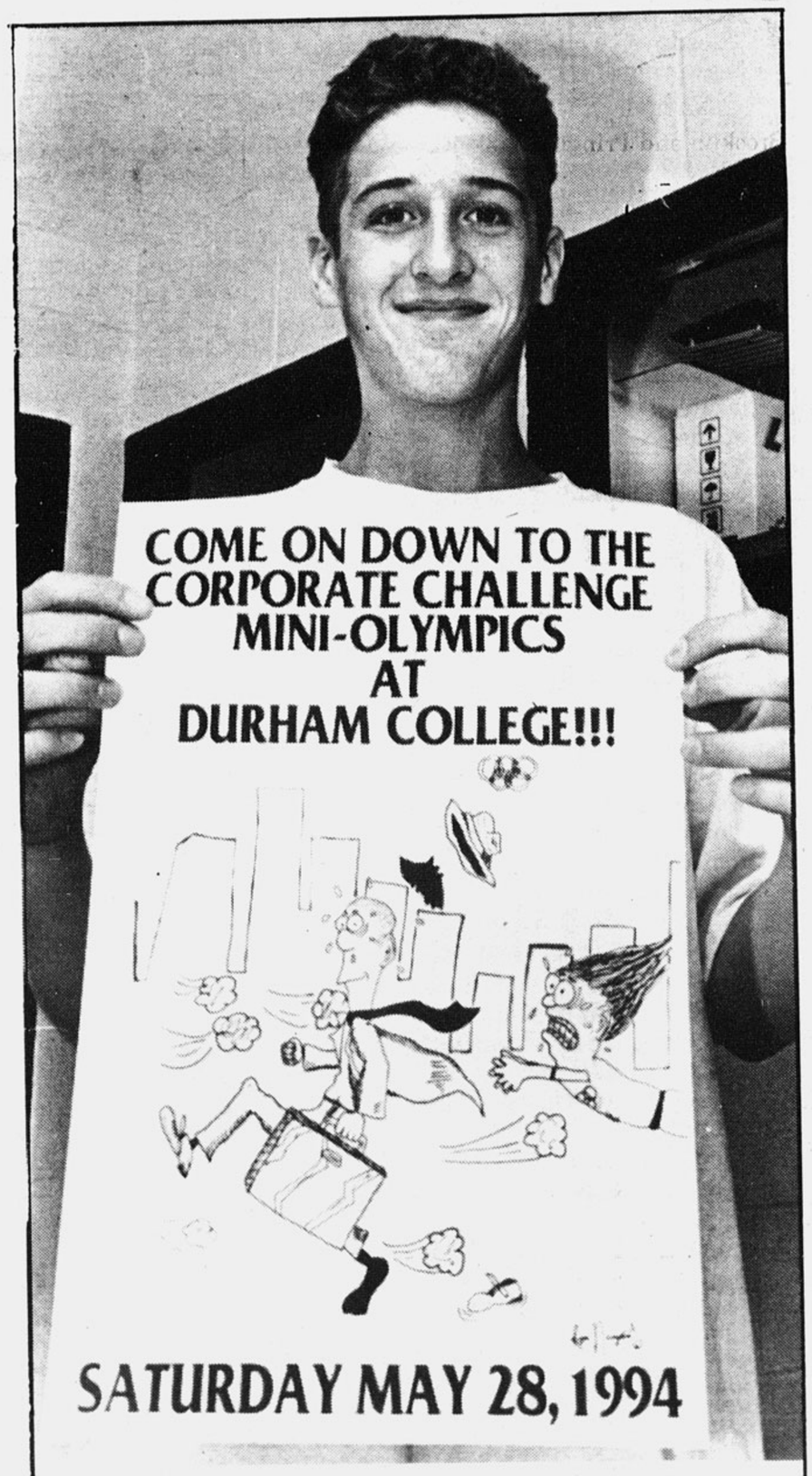
For his part, Savage is prepared to admit he did wrong, provided someone shows him the error of his ways.

"I have nothing against Mr. Hogue," said Savage.

"If he feels I have written or said anything derogatory, I will apologize, but I don't think I have," he said.

Savage has not sought legal advice, nor does he intend to, he said.

Admitting that he would prefer not to be a DBIA member, Savage claimed the board's own actions force him to frequently write letters on different subjects.



HENRY STREET High School student Ryan Newport holds the logo he designed for the Oshawa Chamber of Commerce's Corporate Challenge. The chamber gave him $50 for his winning design.

Photo by Mark Reesor, Whitby Free Press

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